

CONTRACT FOR *DEBRIS MANAGEMENT*

This contract is dated, made, and entered into as of the ____ day of _____, 20____, by the City of Durham ("City" or "Owner"), a N. C. municipal corporation, and AshBritt, Inc. ("Contractor"), a corporation organized and existing under the laws of the State of Florida and holding a certificate of authority to do business in North Carolina.

Sec. 1. Background and Purpose. The Contractor shall provide all expertise, personnel, tools, materials, equipment, transportation, supervision, and all other services and facilities of any nature necessary to perform the timely removal and lawful disposal of all eligible storm-generated debris including hazardous and industrial waste materials and within the time specified in this contract. Emergency debris push, debris removal, demolition of structures and hazard mitigation actions shall be limited to:

- 1) That which is necessary to eliminate immediate threats to life, public health, and safety;
- 2) That which is necessary to eliminate immediate threats of significant additional damage to improved public or private property.
- 3) That which is considered essential to ensure the economic recovery of the affected community to the benefit of the community at large.

Sec. 2. Services and Scope to be Performed. In performing its obligations under this contract, Contractor shall comply with all applicable regulations promulgated by the Federal Emergency Management Agency (FEMA), including but not limited to FEMA 321-Public Assistance Policy Digest, FEMA 322- Public Assistance Guide, FEMA 323- Public Assistance Applicant Handbook, and FEMA325- Public Assistance Debris Management Guide including hazardous and industrial waste materials and provide such services within the time specified in this contract.

The Contractor shall provide for the effective and efficient removal and lawful disposal of storm debris accumulated on all public properties, streets, roads, or other rights-of-way, public school properties, any other locally owned facility or residential or commercial site as may be directed by the City. The work to be performed under this Contract shall consist of collection, removal, and disposal of the debris caused by the disaster. The Contractor shall not be paid to remove, process, or dispose of debris that is unrelated to disaster damage. Direction by the Owner in this contract shall also mean direction by the approved Debris Monitor. Trees, limbs, and debris (including fallen trees) which are located partially on or above public property or right-of-way shall be cut at the right-of-way (ROW) line or property line, and the public portion shall be removed under this contract. No debris shall be loaded without the presence of a Monitor issuing a proper load ticket to document the origin of the load, date, contractor name, truck number, truck capacity, point of debris collection, and loading departure time.

The Contractor shall maintain debris work sites in accordance with appropriate use standards, safety standards, and regulatory requirements. All loads hauled shall be full and well compacted. Contractor shall track and map streets cleared of ROW debris during each pass and provide this information to the Monitor on a daily basis. To receive payment under this Contract, Contractor shall submit an invoice to the Monitor for the debris hauled to each reduction or disposal site in accordance with the specifications, which shall be calculated from load tickets that are issued by an Owner representative at each site. Contractor shall be paid solely on the tickets issued and verified by the Monitor at the reduction sites.

Contracted services will only be performed after the delivery, to the **Contractor**, an Approved Work Authorization and a Notice-to-Proceed by the City.

For purposes of this Sec. 2, the following terms are defined:

(a) "Debris Monitor" or "Monitor": the Debris Monitor serves as the Owner's field representatives. The Debris Monitor ensures that the terms and specific monitoring and documentation requirements of debris removal contracts are adhered to and met for force account debris removal operations and that the debris removal operations are efficient, safe, and properly documented in conformance with regulatory requirements.

(b) "Debris Management Sites" or "DMS": A DMS is a location for the Owner designated by the Owner and/or Monitor to temporarily store, reduce, segregate, and/or process debris before it is hauled to its final disposition. It is frequently used to increase the operational flexibility when landfill space is limited or when the

landfill is not in close proximity to the debris removal area.

2.1. Removal and Hauling Vegetative Debris:

As identified by and directed by the Owner or Monitor, the Contractor shall accomplish the pickup, loading, and hauling of all vegetative debris collected from public property and ROW. The Contractor shall haul vegetative debris to a Debris Management Site(s) (DMS) within the community as designated by Owner. This includes fallen tree and limb debris that is located on public property and ROW as well as hazardous limbs and trees removed by the Contractor per the Contractor Unit Price Schedule (Exhibit A) and placed on public property or ROW. The Contractor shall provide an inspection tower in accordance with the Supplemental General Conditions. Payment under this pay item shall be based on a per cubic yard quantity.

2.2. Site Management:

The Contractor shall manage up to four Debris Management Sites (DMS) designated by the Owner. Site management, debris reduction, and site closure shall comply with all laws and regulations. DMS management shall include site security and include segregation of types and sources of debris, as directed by the Owner. Payment under this pay item shall be based on a per cubic yard quantity.

2.3. Reduction of Vegetative Debris by Grinding:

The Contractor shall reduce vegetative debris by grinding. This may include vegetative debris delivered to the DMS by the Contractor, by the Owner, or by others. Payment under this pay item shall be based on a per cubic yard quantity.

2.4. Reduction of Vegetative Debris by Burning:

The Contractor shall reduce vegetative debris by air curtain incinerator burning or open burning if permitted by the Owner. This may include vegetative debris delivered to the DMS by the Contractor, by the Owner, or by others. Payment under this pay item shall be based on a per cubic yard quantity.

2.5. Loading, Hauling, and Disposal of Vegetative Debris Reduced by Grinding:

Contractor shall load and haul reduced (by grinding) vegetative debris to a final disposal site as directed by the Owner. The Contractor may be required to remove and haul reduced vegetative debris from a DMS site or sites managed by others, to an approved landfill as directed by the Owner or Monitor. This pay item does not include tipping or disposal fees. Payment under this pay item shall be based on a per cubic yard quantity. Tipping fees will be paid by Owner or if paid by contractor fees will be submitted at cost for payment by Owner.

2.6. Loading, Hauling, and Disposal of Vegetative Debris Reduced by Burning:

Contractor shall load and haul reduced (by burning) vegetative debris to a final disposal site as directed by the Owner. The Contractor may be required to remove and haul reduced vegetative debris from a DMS site or sites managed by others, to an approved landfill as directed by the Owner or Monitor. This pay item does not include tipping or disposal fees. Payment under this pay item shall be based on a per cubic yard quantity. Tipping fees will be paid by Owner or if paid by contractor fees will be submitted at cost for payment by Owner.

2.7. Removal and Hauling of C&D (Construction & Demolition) Debris to DMS:

As identified by and directed by the Owner or Monitor, the Contractor shall accomplish the pickup, loading, and hauling of all C&D debris collected from public property and ROW. The Contractor shall haul C&D debris to a DMS within the community, as designated by the Owner. Payment under this pay item shall be based on a per cubic yard quantity.

2.8. Reduction of C&D Debris by Grinding, Source Separation or Compaction:

In order to reduce the burden on available landfill space, the Contractor shall reduce C&D debris by grinding, source separation or compaction if permitted by Owner. This may include C&D debris delivered to the DMS by the Contractor, by the Owner, or by others. Payment under this pay item shall be based on a per cubic yard quantity.

2.9. Loading, Hauling, and Disposal of C&D Debris Reduced by Grinding:

Contractor shall load and haul reduced (by grinding, source separation or compaction) C&D debris to a final disposal site as directed by the Owner. The Contractor may be required to remove and haul reduced debris from a DMS site or sites managed by others, to an approved landfill as directed by the Owner or Monitor. This pay item does not include tipping or disposal fees. Payment under this pay item shall be based on a per cubic yard quantity. Tipping fees will be paid by Owner or if paid by contractor fees will be submitted at cost for payment by Owner.

2.10. Loading, Hauling, and Disposal of C&D Debris (Non DMS Option):

As identified by and directed by the Owner or Monitor, the Contractor shall accomplish the pickup, loading, and hauling of all C&D debris from public property and ROW. Contractor shall deliver C&D debris directly to a final disposal site approved and directed by the Owner. Additionally, the Contractor may be required to pick up and remove C&D debris located at DMS sites operated by others, as directed by the Owner or Monitor, for payment under this pay item. Payment under this pay item shall be based on a per cubic yard quantity. Tipping fees will be paid by Owner or if paid by contractor fees will be submitted at cost for payment by Owner.

2.11. Removal of Hazardous Hanging Limbs:

The Contractor shall remove hazardous hanging limbs (hangers) over 2" in diameter from trees on public property and ROW, as identified by the Owner or Monitor. Trees with hazardous limbs must be identified by the Owner or Monitor prior to removal by the Contractor to be eligible for payment. Limbs shall be cut as close as possible to the first healthy lateral limb or trunk to preserve the health of the tree and avoid future hazardous conditions. Limb removal generally will require the utilization of lift equipment and/or workers trained and experienced in climbing. Hazardous limbs shall be removed and placed on public property or ROW for pickup. Payment for this item shall be on a per tree basis. Payment for hauling, reduction and disposal of the hazardous limbs removed and placed on ROW will be handled separately per Contractor Unit Price Schedule. Tipping fees will be paid by Owner or if paid by contractor fees will be submitted at cost for payment by Owner.

2.12. Removal of Hazardous Leaning Trees:

The Contractor shall remove hazardous leaning trees (leaners) 6" or greater in diameter (measured 54" above ground) from public property and ROW, as identified by the Owner or Monitor. Disaster damaged trees leaning more than 30 degrees from vertical and trees with more than 50% of the canopy damaged shall be considered hazardous trees. Hazardous trees shall be removed and placed on public property or ROW for pickup. The Owner or Monitor must identify hazardous trees prior to removal to be eligible for payment. Payment for this item shall be on a per tree basis in size categories as shown in Exhibit A. Payment for hauling, reduction, and disposal of the hazardous trees collected and placed on ROW will be handled separately per Contractor Unit Price Schedule.

2.13. Removal of Hazardous Stumps:

If more than 50% of the root ball of a stump, greater than 24 inches diameter measured 24 inches above the ground, is exposed, the stump shall be removed. Prior to stump removal, the contractor shall contact North Carolina 811 to confirm that there are no utility conflicts within the stump excavation area. The Contractor shall back-fill each stump hole flush with the surrounding ground with compatible material. The Contractor shall place compatible fill dirt in ruts created by contractor's equipment and holes created by removal of hazardous stumps. Stumps on public property or ROW with less than 50% of the root ball exposed shall be cut flush with the ground. Payment will be on a per stump basis in size categories as shown in the Contractor Unit Price Schedule. Payment is for stump removal only. For hauling purposes, stumps will be converted to cubic yards measurement and hauled per Contractor Unit Price Schedule. For reduction and disposal purposes, stumps will be considered vegetative debris

and handled as such under separate line items.

2.14. White Goods:

The Contractor shall remove, decontaminate, transport, and recycle (or dispose of, at contractor's discretion) all appliances (white goods), including refrigerators, freezers, HVAC units, washing machines, dryers, etc., from public property and ROW. All appliances shall be decontaminated in accordance with applicable laws and regulations. Freon capture must be performed by a licensed technician. White goods may be transported to a storage area before decontamination as long as Freon is not released during the removal, hauling, or recycling. Contractor shall be responsible for any disposal costs. Unit costs under this line item shall be two fold; first for hauling the actual white good unit, second for refrigerant management. Payment under this item will be per each unit.

2.15. Electronics Waste:

The Contractor shall removal, haul, and recycle (or dispose of, at contractor's discretion electronics waste (e-waste) from public property and ROW. Payment under this item will be per unit. Contractor shall be responsible for any disposal costs.

2.16. Concrete:

The Contractor shall load, haul, and dispose of concrete material separated by the property owner and placed on public property and ROW, as directed by Owner or Monitor. Any tipping fees shall be paid by Owner. Payment under this item will be per cubic yard.

2.17. Household Hazardous Waste:

Household Hazardous Waste (HHW) includes handling, removal and collection of propane tanks, paint, pesticides and other materials that are prohibited items from disposal in Subtitle D landfills and Class I disposal sites. The Contractor will segregate these items from vegetative and C/D debris and load and transport the HHW to a collection site identified by the Owner within approximately 50-miles of the City limits. Disposal will be the responsibility of Owner. No disposal is included in this line item. The HHW will be segregated in the field and hauled in concentrated loads. Payment under this item will be per pound.

2.18. Lawnmowers and Equipment with Small Engines:

The Contractor shall remove, decontaminate, transport, and dispose of all abandoned lawnmowers and other equipment with small engines from public property and ROW. All lawnmowers, equipment, and small engines shall be decontaminated and disposed in accordance with applicable laws and regulations. Tipping fees will be paid by Owner or if paid by contractor fees will be submitted at cost for payment by Owner. Petroleum or other contaminants shall not be released during the removal, hauling, decontamination, or recycling. Payment under this item will be per each unit.

2.19. Abandoned Tires:

If directed by Owner, the Contractor shall remove and transport abandoned tires from public property and ROW. The Contractor will segregate these items from vegetative and C&D debris and load and transport the tires to a collection site as identified by Owner. The tires will be segregated in the field and hauled in concentrated loads. Payment under this item will be per tire. Tipping fees will be paid by Owner or if paid by contractor fees will be submitted at cost for payment by Owner.

2.20. Removal, Hauling, and Disposal of Dead Animal Carcasses:

The Contractor shall remove haul and dispose of dead animal carcasses as directed by the Owner or Monitor. Disposal must be in accordance with federal, state, and local regulations. Tipping Fees will be paid by Owner or if paid by contractor fees will be submitted at cost for payment by Owner.

2.21. Removal and Hauling of Storm Deposited Soils to DMS:

As identified by and directed by the Owner or Monitor, the Contractor shall accomplish the pickup, loading, and hauling of all storm deposited soils (sand, silt, mud) collected from public property and ROW. The Contractor shall haul storm deposited soils to a DMS within the community, as designated by Owner. Payment under this pay item shall be based on a per cubic yard quantity.

2.22. Removal and Hauling of Mixed C&D and Vegetative Debris to DMS:

As identified by and directed by the Owner or Monitor, the Contractor shall accomplish the pickup, loading, and hauling of all mixed Vegetative and C&D Debris collected from public property and ROW. The Contractor shall haul Vegetative and C&D debris to a DMS within the community, as designated by the Owner. This material will be reduced under the C&D Grinding line item. Payment under this pay item shall be based on a per cubic yard quantity.

2.23. Removal and Hauling of Debris Potentially Containing Asbestos to Landfill:

As identified by and directed by the Owner or Monitor, the Contractor shall accomplish the pickup, loading, and hauling of all debris thought to contain Asbestos Containing Materials (ACM) from public property and ROW. Contractor shall deliver this debris directly to a final disposal site approved and directed by the Owner. Work shall be conducted in accordance with State and Federal Guidelines. Payment under this pay item shall be based on a per cubic yard quantity. Tipping fees will be paid by Owner or if paid by contractor fees will be submitted at cost for payment by Owner.

2.24. Priority of Work Areas:

The Owner will establish the priority of and shall approve the geographic work areas and types of debris in advance, which the Contractor will be allowed to work. Daily and/or weekly scheduled meetings will be held to determine approved work areas. If multiple contracts are awarded, each Contractor will be assigned a geographic area or type of debris. The Owner may choose to reassign areas at any time for any reason. The contractor shall remove all debris and leave the site from which the debris was removed in a clean and neat condition with the understanding that there will be small quantities of leaves, twigs, bark, and household debris, (generally one-half cubic foot or less that is not picked up by equipment, machinery, and general laborers used by the Contractor). Determination of when a site is in a clean and neat condition will be at the reasonable judgment of the Owner or its agent. **Contractor will not be allowed to “cherry pick” debris.**

2.25. Debris Ownership and Hauling Responsibilities:

Once the Contractor collects debris, it is the property of the Contractor and the Contractor is solely responsible for all aspects related to the debris, including, but not limited to, the hauling and disposal of the debris.

2.26. Debris Disposal:

A. The Contractor shall dispose of all debris, reduced debris, ash residue and other products of the debris management process in accordance with all applicable federal, state, and local laws, standards and regulations. Final disposal locations will be at [State of North Carolina Department of Environmental Quality – Division of Waste Management] approved facilities with prior notification to the Owner and their consent on the proposed disposal site. Information regarding the location of final disposal shall be attached to this Contract in the form of an Addendum to this Contract. The Contractor and the Monitor representative assigned to the disposal process shall maintain disposal records and documentation. All temporary DMS sites shall comply with all local, state, and federal laws and regulations. Location and operation of all temporary DMS sites must be approved by Owner.

B. If Contractor hauls debris to a temporary DMS that was not permitted prior to the disaster, the Contractor is responsible for ensuring certification of proper closure of the DMS site per applicable federal, state, or

local criteria. Acceptance of proper closure by relevant government authorities must be documented by the Contractor prior to final payment under this contract. Contractor will be responsible for performing applicable environmental baseline studies prior to utilizing a site.

C. Contractor acknowledges, represents, and warrants to the Owner that it is familiar with all laws relating to disposal of the materials as stated herein and is familiar with and will comply with all guidelines, requirements, laws, regulations, and requests of FEMA, or any other Federal, State or local agencies or authorities.

D. Contractor acknowledges and understands that any disposal, removal, transportation, or pick-up of any materials not covered in this scope of work shall be at the sole risk of the Contractor. Contractor understands that it will be solely responsible for any liability, fees, fines, claims, etc., which may arise from its handling of materials not covered by this scope of work.

E. Contractor is responsible for determining and complying with applicable requirements for securing loads while in transit and that all trucks have a solid tailgate made of metal. Contractor shall assure that all loads are properly secured and transported without threat of harm to the general public, private property, and public infrastructure.

F. The Contractor shall ensure that all vehicles transporting debris are equipped with and use tarps or netting to prevent further spread of debris.

2.27. Contractor Equipment:

A. All equipment and vehicles utilized by the Contractor shall meet all the requirements of federal, state, and local regulations including, without limitation, all USDOT and state regulations, and are subject to the approval of the Owner. All loads must be secured and tailgates must be used on all loads. Sideboards must be sturdy and may not extend more than two feet above the metal sides of the truck or trailer. Trucks shall carry a supply of absorbent to be used to pick up any oil spilled from loading or hauling vehicles.

B. The Contractor shall supply vinyl type placards identifying the Owner, the names of the Contractor and subcontractor, and large spaces for the Monitor to write in the assigned truck number and measured cubic yardage of the truck or trailer. The Contractor shall maintain a supply of placards during the project in the event replacements are needed. Placards must be in plain view from the tower as trucks or trailers enter processing and disposal facilities.

C. The Contractor shall furnish a complete and updated list identifying truck and trailers that will be used in the transport of debris from the DMS sites to the permanent disposal sites. The listing shall include the following information:

- a. Truck and/or trailer license number.
- b. Year, make, and color of each truck and/or trailer.
- c. Cubic yardage capacity of each trailer as measured and recorded by the Monitor.

D. Each truck and trailer passing through disposal check points shall be identified by a Contractor's logo and an identifying number that ties the vehicle to the above information. Any vehicle not matching the above information or not containing other identification as may be required by the Owner shall not be paid for debris being transported.

E. Contractor shall be responsible for providing protective gear and equipment to its agents and employees and for ensuring its proper utilization in the event of an encounter with asbestos in the debris being removed and the demolition of structures containing (and suspected to contain) asbestos material under this contract.

2.28. Emergency Road Clearance:

Immediately following a disaster, it may be necessary to perform emergency clearance of primary transportation routes as directed by the Owner. Payment under this item will be on an hourly basis for manpower

and equipment as listed in Part II of the Contractor Unit Price Schedule. This hourly work will only be conducted for the first 70 hours unless otherwise agreed in writing.

2.29. Disaster Recovery Technical Assistance:

The Contractor will provide, upon request, Disaster Recovery Technical Assistance to elected and appointed officials within the City. This service shall include support guidance on all aspects of the recovery process. Emphasis will be on the debris management disaster grants. The contractor will provide compliance and documentation support through the use of experienced specialists. These specialist will be supervised by a senior contractor team member with the goal of assisting the City to receive the maximum reimbursement available from external sources.

Sec. 3. Intentionally omitted.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor's Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The invoiced amounts shall comply with the following requirements and restrictions:

1. All labor rates are to be fully burdened to include all taxes, benefits, handling charges, equipment, mileage, rentals, per diem, housing, reproductions, overhead, profits, and any other expenses necessary to the execution of this contract.
2. Billable time shall include hours when debris-hauling trucks are in operation as well as reasonable start-up and close of day actions. Billable time shall be supported with daily timesheets or other documentation processes as approved in writing by the City.
3. All load tickets; forms, reports, and other deliverables shall be accurately and correctly submitted. In some instances, Contractor may be required by the City or appropriate regulatory agencies to modify such documents as a result of policy, procedures, or process changes. The Contractor shall not bill and shall not be paid for time spent by any personnel to correct a load ticket, form, report, or other deliverable resulted from the sole error, negligence, or willful misconduct of the contractor.

Invoices will be processed for payment only after approval by the City. The contractor shall be responsible for reviewing the Debris Manager's deliverables and invoices and certifying their consistency with Contractor's deliverables and invoices and for resolving any discrepancies that may exist. Approval for payment shall not be granted until appropriate deliverables are received and determined to be correct, accurate, and consistent by the City of Durham's Debris Program Manager. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section. The Contractor shall be compensated for the Work performed in an amount not to exceed, \$3,259,410.00

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

Sec. 7. Insurance. Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverage's and limits. The requirements contained herein,

Contract for Debris Management

as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Automobile Liability – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.

Umbrella or Excess Liability – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Contractor agrees to endorse City of Durham as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.

Worker's Compensation & Employers Liability – Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with Employer Liability limits of no less than \$1,000,000 each accident, each employee and policy limit. This policy must include a Waiver of Subrogation.

Additional Insured – Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read 'City of Durham as its interest may appear'.

Certificate of Insurance – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham
Attn: Public Works, Lorie F. Fillyaw
101 City Hall Plaza, 3rd Floor
Durham, NC 27701

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule required by this contract, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section. [

Sec. 9. Exhibits. Exhibit A Contractor Unit Price Schedule List containing 7 page(s).
In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 10. Notice. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and

extension or renewal of the term. All such notices shall be given by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Department of Public Works, Marvin Williams Director
City of Durham
101 City Hall Plaza, 3rd Floor
Durham, NC 27701-3329
The fax number is (919) 560-4316
Email: marvin.williams@durhamnc.gov

To the Contractor:

AshBritt Inc.
Attention: Matt Gierden
565 East Hillsboro Boulevard
Deerfield Beach, FL 33441
The fax number is 954-301-3220.
Email: matt@ashbritt.com

(b) Change of Address. Date Notice Deemed Given. A change of address, email address, fax number, or person to receive notices under subsection (a) shall be made by notice given pursuant to subsection (a). All notices and other communications related to or under this contract shall be deemed given and sent at the time of actual delivery, if personally delivered or sent by fax, personal delivery, UPS, Federal Express, or a designated delivery service. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade

Secrets; Confidentiality”) shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word “candidate” in the RFP section just cited shall mean the “Contractor.”

Sec. 13. Termination for Convenience (“TFC”). (a) *Procedure.* Without limiting any party’s right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City’s instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 14. State Law Provisions.

(a) E-Verify Requirements. (A) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (A) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (A) in entering into this contract. (B) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

(b) Iran Divestment Act Certification. The Contractor certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Contractor was not identified on the Iran List. If it did not submit a bid for this contract, the Contractor certifies that as of the date that this contract is entered into, the Contractor is not identified on the Iran List. It is a material breach of contract for the Contractor to be identified on the Iran List during the term of this contract or to utilize on this contract any subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- “Contractor” means the person entering into this contract with the City of Durham; and “Iran List” means the Final Divestment List – Iran, the Parent and Subsidiary Guidance List – Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 147-86.58 of the N.C. Iran Divestment Act.

Sec. 15. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. “Agent for Service of Process” means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies

that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EBOP. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(i) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(j) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(k) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(l) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

Contract for Debris Management

ATTEST:

CITY OF DURHAM

By: _____

preaudit certificate, if applicable _____

ASHBRITT, INC.

By: _____ (SEAL)

Title of Officer: _____

State of _____ ACKNOWLEDGMENT BY ASHBRITT, INC.

County of _____

I, a notary public in and for the aforesaid county and state, certify that

_____ personally appeared before me this day and stated that he or she is [*strike through the inapplicable:*] chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of ASHBRITT, INC., a foreign corporation with a certificate of authority to do business in North Carolina, and that by authority duly given and as the act of the corporation, he or she signed, under seal, the foregoing contract or agreement with the City of Durham. This the _____ day of _____, 20__